



United States  
Department of  
Agriculture

Forest  
Service

Uinta National Forest

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Pete Stevenson  
On-Scene Coordinator  
USEPA Region 8  
Mail Code: EPR-SA  
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Denver, CO 80202

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Re: American Fork Canyon, Uinta National Forest

Dear Pete:

This letter confirms a meeting between representatives of USEPA Region 8 and the USDA Forest Service set for November 7-8, 2001. The meeting is scheduled for 1:30 PM at the Region 8 offices in Denver, Colorado. The purpose of the meeting will be to determine whether joint management between EPA and the Forest Service of the American Fork Canyon environmental cleanup project is possible. If we determine that such joint management is possible, the purpose of the meeting will also be to agree on the conceptual framework for that management.

There are numerous hazardous substance release locations within the American Fork Canyon (AFC) Site that should be addressed if we are to meet our goal of meeting water quality standards for American Fork River and its tributaries. The removal actions being considered involve locations with "mixed ownership" – several of the locations are on private (patented) land, some are on National Forest System lands (NFS lands), and other locations involve both private and NFS lands. EPA has CERCLA authority on private land while the Forest Service has parallel CERCLA jurisdiction on NFS lands. (The release of hazardous substance locations in the AFC Site do not warrant Emergency Response and are not listed on the National Priorities List.)

The Forest Service has been in the investigation and planning stages for response actions in the Canyon for two years and has been coordinating actions informally with EPA Region 8 during 2001. Accordingly, we are in the process of preparing contract plans and specifications for removal, and deposition in a repository, of mining wastes in the Pacific Mine and Dutchman Flat areas. We are preparing to proceed with CERCLA removal actions at these locations during the summers of 2002 and 2003. These removal actions will include constructing a repository on NFS lands for disposal of waste rock and tailings from locations on NFS, and can be made sufficient in size to accommodate privately owned wastes from selected locations.

Early on in this process our agencies recognized that it would be efficient and environmentally beneficial for EPA and the Forest Service to work cooperatively in cleaning up sites in the Canyon. There have been numerous discussions at various levels of our agencies, and at the



Department, about how best to coordinate our efforts to minimize costs, maximize accomplishments, and achieve restoration of environmental standards in American Fork Canyon.

The approach that I have championed is for EPA and the Forest Service to proceed with a joint project, addressing the private and public locations simultaneously in one action financed appropriately by both agencies. Last week I provided you with a conceptual plan (Engineer's Estimate) that assigned commensurate shares to the Forest Service and the private portion (EPA) of the cost for the proposed removal action. By combining our financial resources to fund the total removal action, we can keep costs to the Government down and facilitate a more effective and efficient cleanup effort.

You have discussed with me another approach in which EPA and the Forest Service would execute two, staggered removal efforts by separate and distinct entities, either by contracts or with a portion of the work being done by the U.S. Bureau of Reclamation's force account crew. The two operators would work on private and public land, respectively. Both contractors would send waste to the joint repository. To prevent congestion of construction equipment and delays to the contractors, portions of the Forest Service work would be completed before the work on private lands would begin. *One concern that I have not expressed to you about this approach is that it eliminates the opportunity to mix the saturated waste from the Pacific tailings pond on National Forest lands with the dry waste rock from private lands. That will significantly increase the effort and cost of stabilizing the tailings in the repository.*

Steve Hawthorn, EPA, and Holly Fliniau, USDA, have also had several conversations about joint management of the project. Steve and Holly discussed the option of proceeding with a single contractor. That single contractor could be EPA's pre-approved contractor or one of the Forest Service's two pre-approved contractors. Alternatively, the contractor could be selected through the Forest Service's competitive bid process.

In discussions I had with Scott Elliott, USBR, last week he suggested it may be within USBR's capabilities to perform all the proposed removal action with their force account crews. You have indicated to me a preference toward utilizing them and I concur that it would be advantageous to all involved if USBR could perform this work. They will assess their capabilities and let us know soon if they could take on this work in 2002 and 2003 and what their costs would be.

I believe it is feasible to make any of the above options work. There are other variations of these options that could also be implemented if we are forced to modify our plans for this project to meet current budget constraints of either agency. But we need to settle on the one that meets our objectives and authorities in the most efficient manner within our budget situations very soon.

In my "Engineer's Estimate -- Mine Waste Removal Project - Pacific Mine and Dutchman Flat," I have provided preliminary estimated costs for the 2002 and 2003 projects, obviously subject to change as the removal package is completed. Many line items in these projections are attributable solely to the work on the private land. Some items, such as constructing or maintaining the repository, are attributable to work required on private land and on NFS lands. The document includes a breakdown of costs between the private (EPA) costs and the Forest

Service costs. I estimate the value of the work if performed by commercial contractors to total approximately \$1.5 million. The private (EPA) share of this cost is about \$327,000 in 2002 and \$98,000 in 2003. If your available funding is less than this amount in 2002 we can explore other implementation variations that meet your constraints at our upcoming meeting.

In discussions between our respective legal counsels, they have determined that EPA would have the opportunity for cost recovery of some or all of this amount through CERCLA cost recovery actions against the Bass trust and /or Snowbird.

In our view, combining our agencies' resources and authorities is the preferred approach, resulting in one removal action occurring in 2002 and one in 2003. Given the anticipated FS budget for 2002, the FS is committed to beginning this removal action this fiscal year. But in order to proceed with removal actions in the AFC Site in 2002 we must have timely decisions and commitments between agencies. At a minimum, this joint approach must include:

- *A Memorandum of Understanding* memorializing that EPA is exercising its CERCLA authority on the private land and that the Forest Service is exercising similar authority on the public land within the site. We provided a draft of an MOU to Region 8 on February 1, 2001.
- *An Interagency Agreement directing funds from one agency to the other.* If we proceed with EPA's pre-approved contractor, the IAG would direct funds from the Forest Service to EPA Region 8. If we use a Forest Service contractor, funds would flow in the other direction. If USBR does the work there will probably need to be two IAG's between them and our respective agencies.
- *A financial commitment from EPA.* EPA has advised us that \$300,000 of program funds may be available in FY 2002 for this project. At this point we do not have a clear understanding of whether these funds are firmly committed. Also, as noted above, I estimate that the private portions of the project will cost \$425,000 over two years. We need confirmation that EPA is able to commit this level of funding to this project, dependent upon allocations of funds to EPA.
- *An agreement from EPA regarding the long term costs of maintaining the repository.* This agreement could be included in the IAG mentioned above, or it could be struck in a separate instrument agreed upon between the agencies.

Please consider these matters in detail before our November 7-8, 2001 meeting so decisions can be made at that time. Assuming that joint removal actions are to occur in 2002, the appropriate instruments must be in place before we solicit bids in February 2002.

We remain flexible and receptive to any workable plan to get this work done. We are anxious to cooperate with EPA on these projects but we are approaching decisions points in time that cannot be postponed. If we do not have an agreement in principle on a joint management plan

by the end of the November meeting, the Forest Service will have to proceed with removal actions at the locations on NFS land. Without participation by EPA in construction of the repository it will not be large enough to accommodate waste from private lands, thus complicating any future response and cleanup of locations on private property.

We look forward to a productive meeting in November. Please call me at (801) 342-5171 if you have questions or need additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ted Fitzgerald".

TED FITZGERALD  
Uinta National Forest

cc: Steve Hawthorn, EPA R8  
Maureen O'Reilly, EPA R8  
Nancy Mangone, EPA R8  
Holly Fliniau, USDA HMMG  
Suzanne Buntrock, USDA FS R4  
Kirk Minckler, USDA OGC  
Gary Fremerman, USDA OGC